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No. 82-248

IN THE
Supreme Court of the United States

OCTOBER TERM, 1981

JOHN H. NORBERG, as Tax Administrator of the State of Rhode Island, *Petitioner*,

v.

GEORGE, INC., *Respondent*.

On Writ of Certiorari To The Supreme Court Of The State Of Rhode Island

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

JOHN GORHAM
EDMUND L. ALVES, JR.
GORHAM, & GORHAM, INC.
58 Weybosset Street
Providence, RI 02903
(401) 421-7680
Counsel For George, Inc.

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ARGUMENT

Not only does the petitioner's brief fail to raise a federal question of substance, it fails to raise any federal question at all. This is simply a case in which the Rhode Island Supreme Court has been called on to construe a Rhode Island taxing statute. There were no issues of federal law or constitutional law raised below. The State's highest court has simply interpreted a state statute which it has never before had occasion to construe.

The statute in question is G. L. R. I. Section 44-11-11. It permits a corporate taxpayer to deduct on its Rhode Island income tax return "all items deductible under the federal corporation income tax law applicable to the tax-

able year". For the year in question, George, Inc. deducted on its Rhode Island return certain foreign taxes it had paid. Pursuant to the Internal Revenue Code, George was allowed either a deduction or a credit on its federal return for these foreign taxes paid. George elected credit treatment on its federal return for the year in issue.

The sole question before the Rhode Island Supreme Court was the correct meaning of the word "deductible" within the context of G. L. R. I. Section 44-11-11. George argued that the word should be given its plain meaning and read to mean "capable of being deducted". The petitioner argued that the term should mean "taken as a deduction". The Rhode Island Supreme Court found that both interpretations flow reasonably from the words of the section and therefore legislative intent could not be viewed as settled. The Court then applied well-established Rhode Island law and ruled that doubts concerning revenue statutes are to be resolved in favor of the taxpayer.

Such a decision involves only state law. There are no federal overtones whatsoever. Petitioner's efforts to manufacture a federal question are tortured at best. The Tax Administrator certainly has no vested right in a particular statutory interpretation which is afforded protection by the Fourteenth Amendment. Petitioner's argument that the Court's decision rewrites the statute has even less merit. The final authority on the construction of a Rhode Island statute is the Rhode Island Supreme Court. That Court decides what the statute means, not the Tax Administrator or the state legislature.

In this case, the Rhode Island Supreme Court has rendered its decision on a question of state law. There is

no federal question whatsoever. Respondent, therefore, respectfully requests that this Honorable Court deny the Tax Administrator's petition for writ of certiorari in this matter.

Respectfully submitted,

JOHN GORHAM
EDMUND L. ALVES, JR.
GORHAM, & GORHAM, INC.
58 Weybosset Street
Providence, RI 02903
(401) 421-7680
Counsel For George, Inc.